

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Ronald Lesser Confirmation No.: 3406
Serial No.: 09/157,998 Art Unit: 3626
Filed: September 22, 1998 Examiner: Morgan, Robert W.
For: A SOFTWARE DEVICE TO FACILITATE CREATION OF MEDICAL
RECORDS, MEDICAL LETTER, & MEDICAL INFORMATION FOR
BILLING PURPOSES

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF ENTRY OF AMENDMENT UNDER 37
C.F.R. 1.312 AFTER NOTICE OF ALLOWANCE**

Sir:

This is a matter of some urgency. in that Applicant has already paid the issue fee in this application. This communication follows the PTO's July 2, 2010 Response disapproving Applicant's March 30, 2010 Amendment Under Rule 312.

Especially in view of the protracted prosecution of this application (it originally was filed in 1998), Applicant submits that the Amendment should be entered. Specifically, Applicant has simply renumbered the "new" dependent claims as requested by the Examiner, and respectfully requests reconsideration and approval of the revised Amendment as set forth herein.

Certificate of EFS Transmission

I hereby certify that this correspondence is being transmitted via EFS to: Mail Stop: RCE, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below:

/J. Mark Holland/

March 30, 2010

J. Mark Holland, Reg. No. 32,416

DATE

Moreover, a number of the other parts of the Rule 312 Amendment are formalities, including one specifically requested by the Examiner! Specifically, the amendments include an amendment to Claim 10 (Claim 128 prior to renumbering of that Claim) based on a March 30 call from the Examiner. The Examiner indicated that the dependency of Claim 10 (Claim 128) needed to be corrected, as it was a multiple dependent claim that was improperly depending from another multiple dependent claim. Applicant's amendment (on March 30 and repeated below) includes that change requested by the Examiner.

As another "formality" in that March 30, 2010 Amendment, Applicant submitted copies of various U.S. Government publications (the Evaluation and Management (E/M) Services Guidelines section of the 1994 CPT (Physician's Current Procedural Terminology) book, and the 1995 and 1997 Documentation Guidelines For Evaluation & Management Services, submitted as Exhibits 1-3). Applicant presumes and understands that, regardless of the PTO's disapproval of the March 30, 2010 Amendments, those U.S. Government publications are and will remain part of the prosecution history in this application. If Applicant is mistaken in that regard, please advise.

Another formality is the inclusion in the file history of Applicant's understanding of some of the ways in which lines 11-12 of Claim 1 should be interpreted (quoted here):

Furthermore, Applicant would like to confirm for the record that the limitation "using said electronic computer or said scannable form to electronically derive an appropriate HCFA/CMS billing code from said collected information" in lines 11-12 of Claim 1 should be interpreted to at least include/cover (but is not limited to) the disclosure in Applicant's originally-filed specification at page 15, lines 18-20: "the calculation of billing level could take place on a portable device, if this is used. It also could take place on a desktop computer or network server after the information is uploaded from the portable device." In other words, Applicant respectfully submits that the step of deriving the billing code may be carried out by any device capable of deriving the appropriate billing code from the collected information.

Applicant understands that, at the very least, the foregoing paragraph is and will continue to be part of the file history for this application. If Applicant is mistaken in that regard, please advise.

In passing, Applicant also notes that, for claims OTHER than the new dependent claims, the Examiner had also indicated that it would be appropriate for Applicant to use BOTH the original (prosecution) claim numbering AND the "renumbered" claim numbers that were set forth in the Examiner's Notice of Allowance. Accordingly, Applicant included BOTH of those numbers adjacent each such claim, both in the March 30 amendment and below. Applicant presumes that the PTO has no objection to that "renumbering", and accordingly Applicant has not modified the numbering of those claims from the way they were submitted on March 30, 2010.

Applicant would appreciate prompt consideration of the matters discussed herein and notification of the PTO's change of position. If the PTO has any questions or concerns regarding the foregoing, please contact the undersigned at 949-718-6750.

Remarks begin below and amendments begin on page 11.